

October 18, 2011

Rick Kaplan
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WT 11-65, Applications of AT&T Inc. and Deutsche Telekom AG For Consent To
Assign or Transfer Control of Licenses and Authorizations

Dear Mr. Kaplan:

Public Knowledge applauds the Federal Communications Commission's ("Commission") recent acknowledgment that AT&T has produced "almost nothing" in response to important questions posed in the Commission's Information and Discovery Request, and the Commission's persistent pursuit of answers despite AT&T's resistance.¹ Public Knowledge also urges the Commission to specifically request information from AT&T and Deutsche Telekom ("DT") to produce documents relating to T-Mobile USA's ("T-Mobile") continued viability and value in the absence of a merger with AT&T, and relating to entities other than AT&T that have expressed interest in purchasing or merging with T-Mobile. While Public Knowledge believes that this information is already covered by the Commission's twice-repeated information request, we anticipate that AT&T and DT will argue that they need not include this evidence. Public Knowledge therefore asks the Commission to clarify that it also seeks information relating to T-Mobile's options if it is not acquired by AT&T.

The need for verifiable factual information about T-Mobile's future without AT&T is even more pressing in light of conflicting reports from DT itself. DT Chief Technology Officer Olivier Baujard recently declared that, like any rational company, DT has a "Plan B" and has other opportunities for its U.S. operations in the increasingly likely event that the merger is not approved.² Baujard explained:

"It's not as if we have no other opportunity than to close T-Mobile USA if the deal doesn't work. We have other opportunities. [T-Mobile USA] may not be an economical jewel, but it is a true asset that has many ways to be valued."³

Not surprisingly, within twenty-four hours a DT spokesperson rushed to reassure analysts that Baujard is not involved in the sale of T-Mobile and his statements should be ignored.⁴ Tellingly, DT did not explicitly contradict Baujard's factual assertions.

¹ Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau, to Richard Rosen, WT Docket No. 11-65 (Oct. 13, 2011).

² Leila Abboud & Marie Mawad, *Interview-Deutsche Telekom Backtracks on German Investment Plan*, REUTERS (Sept. 28, 2011), <http://www.reuters.com/article/2011/09/28/idUSL5E7KS73520110928>.

³ *Id.*

Indeed, it now seems that DT may very well be considering other options, including “spinning off T-Mobile USA to shareholders and reviving talks with previous suitors,” having purportedly already considered an initial public offering of T-Mobile as recently as last year.⁵ Who those previous suitors are, however, remains a mystery. DT Chief Financial Officer Timotheus Hoettges has confirmed that T-Mobile held negotiations with no fewer than five companies before agreeing to be acquired by AT&T, and although Sprint Nextel Corporation has been named as one of those companies,⁶ the identities of the other interested parties have been thus far hidden from the public.

This news is in stark contrast to statements by AT&T and others that T-Mobile will only become viable if AT&T acquires it. These revelations raise several important questions about T-Mobile’s helplessness without AT&T, which AT&T has explicitly relied upon in contending that this merger serves the public interest.⁷ Throughout AT&T’s campaign to acquire T-Mobile from DT, the AT&T has told the Commission and the public that AT&T *must* consume T-Mobile or T-Mobile will face imminent extinction. Just last week AT&T again claimed that without AT&T T-Mobile will suffer due to its lack of LTE deployment, and will be left to “fund its future itself” by DT.⁸ These assertions imply that T-Mobile’s only choices are to be acquired by AT&T or perish, but DT officers’ statements to the contrary call into question whether T-Mobile may have multiple options to move forward if the merger is not approved.

If DT chooses to issue an initial public offering of T-Mobile, analysts predict that the move could raise as much as \$28 billion.⁹ Notably, this is \$11 billion less than the \$39 billion that AT&T is currently willing to pay for T-Mobile. The amount raised in an IPO represents the total market value that investors ascribe to a company, so AT&T is apparently willing to pay \$11 billion above T-Mobile’s market value. This begs the question of why T-Mobile is worth \$11 billion more to AT&T than it is worth to the average market investor. To say the least, it is disconcerting to think that AT&T is willing to pay a premium on T-Mobile because of the extra revenue it will receive in monopoly rents after eliminating yet another competitor, or due to

⁴ Leila Abboud, *D. Telekom Rows Back on Comments on Investment, T-Mo*, REUTERS (Sept. 29, 2011), <http://www.reuters.com/article/2011/09/29/deutschetelekom-idUSL5E7KT3JU20110929>.

⁵ Cornelius Rahn, *Deutsche Telekom, AT&T United Front Masks Diverging Interests on T-Mobile*, BLOOMBERG (Sept. 9, 2011), <http://www.bloomberg.com/news/2011-09-08/deutsche-telekom-at-t-seen-at-odds-with-t-mobile-deal-crumbling.html>.

⁶ *Id.*

⁷ See, e.g., AT&T / Deutsche Telekom FCC Application, Public Interest Statement at 32 (quoting *Jan. 20, 2011 DT Analyst Briefing* (Deutsche Telekom CEO Rene Obermann)) (“As DT Senior Vice President Langheim explains, ‘[t]he required substantial investments in LTE in the United States would significantly stretch Deutsche Telekom’s financial capability or, alternatively, force Deutsche Telekom to reallocate investments from our core Europe operations into T-Mobile USA, which has been shrinking for the last two years and which is lacking a clear path towards LTE to stay competitive.’ Because Deutsche Telekom has determined that it cannot divert capital from its core business, it has directed T-Mobile USA to ‘fund its future itself.’”).

⁸ Letter from Robert Quinn, Senior Vice President, Federal Regulatory, AT&T, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, WT Docket No. 11-65 (Oct. 13, 2011) (citing Deutsche Telekom – T-Mobile USA Investor Briefing, at 4 (Jan. 20, 2011), http://www.telekom.com/dtag/cms/contentblob/dt/de/979192/blobBinary/transcript_20012011.pdf).

⁹ Paul Rasmussen, *Deutsche Telekom, AT&T Clash Over T-Mobile Deal Interests*, FIERCEWIRELESS (Sept. 9, 2011), <http://www.fiercewireless.com/europe/story/deutsche-telekom-att-clash-over-t-mobile-deal-interests/2011-09-09>.

“efficiencies” realized by terminating thousands of U.S. jobs. This may not be the true explanation for AT&T’s willingness to outbid its rivals by \$11 billion, but the Commission has a responsibility to investigate and determine whether AT&T’s price point is based upon a market strategy that will not “serve the public interest, convenience, and necessity.”¹⁰

The statements of Baujard and Hoettges, if confirmed, would be fatal to AT&T’s public interest claims and, in turn, to its application to acquire T-Mobile’s licenses and authorizations. AT&T and DT must reveal the facts on these issues before the Commission can reach an informed decision about the effect of this merger on the public interest. In its pursuit for additional evidence, the Commission should asking the following:

- Who were the five companies negotiating with T-Mobile when AT&T submitted its winning bid?
- Why were these offers rejected in favor of AT&T?
- Was AT&T aware of other offers to purchase T-Mobile?
- Did AT&T outbid these offers, and by how much?
- How did AT&T assess the value of T-Mobile compared to other potential bidders?
- Did AT&T note opportunities to exact monopoly rents or place a premium on the elimination of T-Mobile as a disruptive competitor?
- If the merger is not approved, what other options will DT and T-Mobile have?
- May T-Mobile attempt to operate as an independent company?
- Are there other parties still interested purchasing T-Mobile, and how do their offers compare to AT&T’s bid?

Additionally, considering AT&T’s past abuses of confidentiality,¹¹ we request that this information be made publicly available.

Just as AT&T neglected to submit evidence supporting its claims that its acquisition of T-Mobile will create new jobs, AT&T has failed to substantiate its assertion that AT&T is somehow saving T-Mobile by acquiring it. There is substantial reason to believe that AT&T’s claims of saving T-Mobile from perishing at the hands of the market are false. The Commission must take this issue seriously and obtain further information from AT&T and DT about the truth of T-Mobile’s alternatives. Alternatively, Public Knowledge requests that the Commission issue a Hearing Designation Order to refer these questions to an Administrative Law Judge for further investigation.

Respectfully submitted,

/s Harold Feld

Legal Director

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¹⁰ 47 U.S.C. § 310(d).

¹¹ See Letter from John Bergmayer, Senior Staff Attorney, Public Knowledge, to Marlene Dortch, Secretary, Federal Communications Commission, WT Docket No. 11-65 (Oct. 12, 2011); Letter from Harold Feld, Legal Director, Public Knowledge, to Julius Genachowski, Chairman, Federal Communications Commission, WT Docket No. 11-65 (Oct. 4, 2011).